

## Message Text

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TO AMEMBASSY NASSAU IMMEDIATE

C O N F I D E N T I A L STATE 221891

E.O. 11652: GDS

TAGS: PFOR, CPRS, BF

SUBJECT: EXTRADITION - ROBERT L. VESCO

1. DEPT HAS RESEARCHED PROBLEM OF VALIDITY OF CONTINUED APPLICATION OF U.S.-U.K. EXTRADITION TREATY TO BAHAMAS AND HAS FOLLOWING COMMENTS AND ARGUMENTS YOU MAY PASS TO WALLACE-WHITFIELD.

2. THE 1931 U.S.-U.K. TREATY HAS BEEN APPLICABLE IN THE BAHAMAS SINCE IT ENTERED INTO FORCE BETWEEN THE UNITED STATES AND THE UNITED KINGDOM. A BRITISH ORDER IN COUNCIL, DATED JUNE 6, 1935, APPLYING THE EXTRADITION TREATY IN RESPECT OF THE UNITED KINGDOM, THE CHANNEL ISLANDS, THE ISLE OF MAN AND ALL BRITISH COLONIES WAS PUBLISHED IN THE LONDON GAZETTE JUNE 14, 1935. OVER THE YEARS THE UNITED STATES HAS PURSUED EXTRADITION CASES IN THE BAHAMAS PURSUANT TO THIS TREATY. THE MOST RECENT CASE HAS BEEN THE WOODRING CASE.

3. BY ITS LETTER OF JULY 10, 1973, TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, THE PRIME MINISTER OF THE

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COMMONWEALTH OF THE BAHAMAS NOTIFIED THE UNITED NATIONS

OF SUCCESSION BY THE COMMONWEALTH TO EXISTING TREATIES  
QTE BY VIRTUE OF CUSTOMARY INTERNATIONAL LAW. UNQTE

THE LETTER STATED THAT QTE IT IS DESIRED THAT IT BE  
PRESUMED THAT EACH TREATY HAS BEEN LEGALLY SUCCEEDED TO  
BY THE COMMONWEALTH OF THE BAHAMAS AND THAT ACTION BE  
BASED ON THIS PRESUMPTION UNTIL A DECISION IS REACHED  
THAT THE TREATY SHOULD BE REGARDED AS HAVING LAPSED.  
UNQTE THE BAHAMIAN LETTER IS CONSISTENT WITH INTERNA-  
TIONAL PRACTICE.

4. WITH SPECIFIC REFERENCE TO INTERNATIONAL PRACTICE  
OF FORMER COLONIES, TERRITORIES OR DOMINIONS OF THE  
UNITED KINGDOM, UNITED NATIONS DOCUMENT A/CN.4/263 OF  
MAY 29, 1972, TITLED QTE SUPPLEMENT, PREPARED BY THE  
SECRETARIAT TO 'MATERIALS ON SUCCESSION OF STATES' UNQTE  
BEGINNING ON PAGE 45 (MURRAY STEIN HAS A COPY OF THIS  
DOCUMENT WITH HIM) CONTAINS THE TEXT OF UNILATERAL  
DECLARATIONS BY NEW STATES CONCERNING INTERNATIONAL  
INSTRUMENTS APPLIED TO THEIR TERRITORIES PRIOR TO  
INDEPENDENCE. WHILE SOME FORMER BRITISH COLONIES (FOR  
EXAMPLE, KENYA) SET A SPECIFIC LIMIT DURING WHICH  
TREATIES SHOULD CONTINUE IN FORCE, IT WILL BE SEEN THAT  
NOTES TO THE SECRETARY GENERAL FROM ZAMBIA, GUYANA,  
BARBADOS AND MAURITIUS CONTAIN LANGUAGE IDENTICAL TO  
THAT USED IN PRIME MINISTER PINDLING'S LETTER. MORE-  
OVER, NONE OF THE NOTES CONTAIN A PARTICULAR ENUMERATION  
OF THE TREATIES SUCCEEDED TO. THUS, THE ARGUMENT SHOULD  
BE MADE THAT BAHAMIAN NOTIFICATION CONFORMS WITH INTER-  
NATIONAL PRACTICE, A PRACTICE WHICH HAS BEEN RELIED  
UPON BY OTHER STATES, AND COURT RULING OF INVALIDITY  
WOULD BE DISRUPTIVE OF INTERNATIONAL PRACTICE.

5. SECOND ARGUMENT TO BE MADE IS THAT BAHAMAS OBTAINED  
AUTHORITY TO ASSUME LEGAL OBLIGATIONS WHEN IT OBTAINED  
SOVEREIGNTY. AS A SOVEREIGN NATION GCOB MADE POLITICAL  
DECISION TO SUCCEED TO TREATIES; THAT DECISION IS BINDING  
UNDER INTERNATIONAL LAW AND BAHAMIAN MAGISTRATE IS  
BOUND BY POLITICAL DECISIONS OF HIS GOVERNMENT.  
BAHAMIAN ACCEPTANCE OF U.S. EXTRADITION REQUEST CON-  
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STITUTES RATIFICATION BY THE GCOB THAT THEY CONSIDER  
TREATY AS STILL IN EFFECT.

6. PRECEDENT FOR SECOND ARGUMENT EXISTS IN CANADA:  
CANADA BECAME INDEPENDENT IN 1931 UPON ENACTMENT OF  
STATUTE OF WESTMINSTER. CANADA SUCCEEDED TO WEBSTER-

ASHBURTON TREATY OF 1842 BETWEEN U.S. AND U.K. WHICH CONTAINED EXTRADITION PROVISIONS IN FORCE AT TIME OF CANADIAN INDEPENDENCE. AS FAR AS RECORDS OF DEPT SHOW, CANADA ISSUED NO FORMAL DOCUMENT INDICATING SUCCESSION TO TREATY, AND CANADA HAS CONTINUED TO ADHERE TO THAT TREATY IN THE 40 YEARS SINCE ITS INDEPENDENCE. IN 1953, IN THE CASE OF EX PARTE O'DELL AND GRIFFEN, 3. D.L.R. 207, THE HIGH COURT OF ONTARIO REFUSED TO ENTERTAIN THE ARGUMENT THE WEBSTER-ASHBURTON TREATY HAD LAPSED BECAUSE OF THE STATUTE OF WESTMINSTER. ALSO, IN RECENT CASE IN U.S., JHIRAD V. FERRANDINA, DECIDED IN SECOND CIRCUIT ON OCTOBER 24, 1973, THE COURT DID NOT ACCEPT THE ARGUMENT THAT THE U.S.-U.K. TREATY WAS NOT IN FORCE WITH INDIA AFTER INDEPENDENCE. THE COURT NOTED . . . QTE THE POSITION OF THE EXECUTIVE BRANCH, THE ACTIONS OF BOTH GOVERNMENTS, AND THE HISTORICAL CONTINUITY BETWEEN BRITISH INDIA AND THE REPUBLIC OF INDIA SUPPORT THE CONTINUED VALIDITY OF THE TREATY. UNQTE MURRAY STEIN HAS WITH HIM A COPY OF THE JHIRAD DECISION AND IRV JENKINS WILL BE BRINGING COPY OF CANADIAN DECISION.

7. AS FURTHER EXAMPLES OF INTERNATIONAL PRACTICE ON SUCCESSION, WE REFER EMBASSY TO WHITEMAN'S DIGEST, VOLUME 2, PAGES 775-76, REGARDING APPLICABILITY OF BRITISH TREATIES TO INDIA AFTER 1949. ALSO, IN VOLUME 2, WE REFER YOU TO PAGE 976 REGARDING SUCCESSION OF REPUBLIC OF THE CONGO TO FRENCH TREATIES, PAGE 981 REGARDING SUCCESSION OF INDONESIA TO ANGLO-NETHERLANDS EXTRADITION TREATY, PAGE 999 AND 1000 REGARDING ACCEPTANCE BY MALAYSIA AND NIGERIA OF U.K. TREATIES. ALL REFERENCES SUPPORT GENERAL RULE OF INTERNATIONAL LAW REGARDING SUCCESSION. WE ALSO DRAW YOUR ATTENTION

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TO EXCHANGE BETWEEN U.K. AND BURMA REGARDING SUCCESSION OF TREATIES ON PAGE 763 OF VOLUME 6 OF WHITEMAN AS FURTHER SUPPORT FOR GENERAL RULE OF INTERNATIONAL LAW, AND DISCUSSION OF CASE OF IVANCEVIC V. ARTUKOVIC AT PAGE 940 ET SEQ OF VOLUME 6, INVOLVING APPLICATION OF U.S.-SERBIAN EXTRADITION TREATY OF 1902 TO THE SUCCESSOR REPUBLIC OF YUGOSLAVI.

8. DEPT ALSO REFERS EMBASSY TO EXTRACT FROM BOOK STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW BY D.P. O'CONNELL WHICH WILL BE BROUGHT DOWN BY JENKINS. JENKINS WILL ALSO HAVE BOOK QTE EXTRADITION TO AND FROM CANADA UNQTE REQUESTED BY EMBASSY THIS MORNING.

9. DEPT ALSO SENDING DOWN VIA JENKINS A MEMORANDUM  
PREPARED BY TREATY AFFAIRS SECTION OF LEGAL ADVISER'S  
OFFICE CONCERNING CONTINUANCE IN FORCE OF U.K. TREATY  
IN BAHAMAS.

10. AFTER MATERIALS REVIEWED, DEPT WOULD APPRECIATE  
VIEW OF EMBASSY WHETHER LEGAL ADVISER SHOULD SEND  
ATTORNEY TO SUPPLEMENT THE FIVE DEPT OF JUSTICE ATTORNEYS  
IN NASSAU. RUSH

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